



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-18/56829

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 2003, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Eau Claire County Dept. of Human Services in regard to medical assistance, a hearing was held on March 27, 2003, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner was over the asset limit for medical assistance in October and November 2002.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Steve Tilbury, ESS
Eau Claire County Dept Of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of a nursing home in Eau Claire County.
2. The petitioner applied for medical assistance on January 8, 2003 and requested institutional medical assistance retroactive to October 2002. The county agency denied the request for October

and November 2002 because it determined that the combined assets of the petitioner and his wife exceeded the program's limit until December 2002.

3. The assets of the petitioner and his wife included an IRA that made monthly payments of \$405.
4. On October 8, 2002 the petitioner withdrew \$7,000 to pay for the petitioner's nursing home care. They did not actually pay for the care until December 2002. As a result, their combined assets exceeded \$52,000 during October and November 2002.

DISCUSSION

The petitioner seeks eligibility for institutional medical assistance retroactive to October 2002 under the spousal impoverishment provisions of that program. These provisions are found in the federal Medicare Catastrophic Coverage Act of 1988, which is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets under \$100,000 to assign \$50,000 to the community spouse. §49.455(6)(b)3, Stats., *MA Handbook*, Appendix 23.4.2. Because an institutionalized person can have up to \$2,000 in assets, couples in this position generally can have up to \$52,000 in assets and still maintain one of the spouse's eligibility for medical assistance. If the community spouse's income falls short of her needs, she may request through a fair hearing that the asset limit be increased so that more income can be produced. §49.455(8)(d), Stats. However, the spouse has not requested this increase here so the question is when the assets of the petitioner and his wife fell below \$52,000.

The petitioner and his wife have a variety of assets, including an IRA that pays \$405 every month. Since the Wisconsin Court of Appeals' decision in *Keip v. Wisconsin Dept. of Health and Social Services*, 2000 WI App 13, IRAs such as the petitioner's have been excluded from medical assistance assets. However, the *MA Handbook* apparently did not reflect this decision until October 2002. See *MA Handbook*, Appendix, §11.7.21. The petitioner's representative transferred \$7,000 from the IRA to his bank account to pay for his medical care, but did not actually pay for the care until December. This \$7,000 became a countable asset and was sufficient to raise the petitioner's assets over \$52,000, which led to his ineligibility for October and November. The petitioner's representative points out that the only reason he withdrew the money from the IRA was because he assumed from reading the handbook that the IRA was already a countable asset. As a countable asset regardless of whether it was part of the IRA or the bank asset, it would have no affect on the petitioner's eligibility. If the representative had known that the asset was exempt as long as it was part of the IRA he could have either left it in the IRA or paid for the institutional care the same month as the asset was removed from the IRA.

The question is whether the petitioner's reliance upon the *MA Handbook* allows him to become eligible for medical assistance retroactive to October 2002. In essence the petitioner requests that I find that under these circumstances that it would be unfair to uphold the law exactly as it is written. There certainly is some unfairness in relying upon the program's official handbook to one's detriment. Unfortunately, to find the petitioner eligible I would have to exercise equitable powers, which, as an administrative law judge, I lack. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). Therefore, the county agency correctly found that he was ineligible for medical assistance until December 2002 when his and his wife's countable assets no longer exceeded \$52,000. If he believes that he should be found eligible before December he must convince a circuit court, which does have equitable powers, to overturn this decision.

CONCLUSIONS OF LAW

The petitioner was ineligible for medical assistance before December 2002 because his and his wife's assets exceeded the program's limit until then.

NOW, THEREFORE, it is

ORDERED

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 29th day of
April, 2003

/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
86/MDO